

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEVEL 3 COMMUNICATIONS, LLC, a  
Colorado limited liability company,

Plaintiff,

v.

ORION MARINE CONTRACTORS,  
INC., a Delaware corporation,

Defendant.

CASE NO. 2:22-cv-1833

ORDER SETTING  
PRETRIAL PROCEDURES

The Court raises this matter sua sponte. Trial is scheduled to commence on April 15, 2024. The Pretrial conference will be held on April 1, 2024, at 9:30 a.m. in Courtroom 16A of the U.S. District Courthouse in Seattle, Washington. Dkt. No. 13. This Order provides the parties additional guidance about the Court's pretrial procedures.

**1. SCHEDULING ORDER**

The deadlines in the Court's prior Scheduling Order remain in effect, Dkt. No. 13, but the parties are bound by this Order's pretrial procedures. The Local Civil Rules set all other deadlines. The dates listed in the Scheduling Order and set

1 by the Local Civil Rules are firm and cannot be changed by agreement between the  
2 parties. Only the Court may alter the remaining dates in its Orders, and it will do  
3 so only if good cause is shown. If any of the dates identified in this Order or the  
4 Local Civil Rules fall on a weekend or federal holiday, the act or event must be  
5 performed on the next business day.

6 If the scheduled trial date creates an irreconcilable conflict, counsel must  
7 email Grant Cogswell, Courtroom Deputy, at grant\_cogswell@wawd.uscourts.gov  
8 within 10 days of the date of this Order, explaining the exact nature of the conflict.  
9 Failure to do so will be considered a waiver. Counsel must be prepared to begin trial  
10 on the date scheduled but should understand that trial may have to await the  
11 completion of other cases.

## 12 **2. COOPERATION**

13 As required by LCR 37(a), all discovery matters should be resolved by  
14 agreement if possible. Counsel are also directed to cooperate in preparing the final  
15 pretrial order in the format required by LCR 16.1, except as ordered below.

## 16 **3. PRETRIAL PROCEDURES**

### 17 **3.1 Pretrial Order.**

18 When filing the pretrial order, the parties must also send a Microsoft Word  
19 version of the proposed order, including witness and exhibit lists, to  
20 whiteheadorders@wawd.uscourts.gov.  
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22  
23

### 3.2 Jury Instructions.

As much as possible, the parties should agree on one stipulated set of proposed jury instructions. Only true uncertainty about the binding substantive law should prevent such agreement. The Court will usually follow the current version of the Manual of Model Jury Instructions for the Ninth Circuit or the Washington Pattern Jury Instructions—Civil, where appropriate. The parties should identify whether a proposed instruction is Preliminary (i.e., to be given at the start of trial), In-Trial (i.e., to be given, as necessary, during trial), or Final (i.e., to be given at the conclusion of evidence). The parties must follow LCR 51 in all other respects.

### 3.3 Exhibits.

The parties must deliver the original trial exhibits and one copy to Mr. Cogswell five (5) days before the trial date. Each exhibit must be clearly marked. The Court alters the LCR 16 procedure for numbering exhibits as follows: Plaintiff's exhibits should be numbered consecutively beginning with 1; Defendant's exhibits should include the prefix "A" and should be numbered consecutively beginning with A-1. Duplicate exhibits should not be listed. Once a party has identified an exhibit in the pretrial order, any party may use it. Each set of exhibits must be submitted in a three-ring binder with appropriately numbered tabs.

In addition, no later than seven (7) days before the trial date, the parties must send an electronic copy of all exhibits in PDF format with Optical Character Recognition (OCR) searchable text to Mr. Cogswell. The parties should notify the Court of any physical objects or files that cannot be transmitted electronically.

1 Exhibits must be marked as described above, and the protocols below also apply: (1)  
2 electronic exhibits must be transmitted individually (i.e., one exhibit per file), but  
3 exhibits may have multiple pages; (2) Exhibit file names should match the  
4 descriptions listed on the joint exhibit list as closely as possible except that file  
5 names should not exceed 80 characters (e.g., Ex. 1 – Accident Scene Photo; Ex. A-1 –  
6 Email dated 4-03-23).

7 Even stipulated exhibits and other exhibits the Court finds admissible must  
8 be offered into evidence before they are formally admitted at trial.

### 9 **3.4 Streamlining Evidentiary Disputes.**

10 As best they can, counsel should anticipate any evidentiary issues that might  
11 require argument, and they should raise those issues outside the presence of the  
12 jury. To this end, at the close of each trial day, counsel must exchange a list of  
13 witnesses and exhibits (other than those used for impeachment of an adverse  
14 witness) that may be offered into evidence the next day. The first list should be  
15 exchanged two days before the first trial day.

16 If the opposing party objects to any witnesses or exhibits, the parties must  
17 meet and confer to resolve any objections and to reach stipulations. If objections  
18 remain after conferring, the party offering the disputed exhibit(s) must email  
19 Mr. Cogswell by 8:00 p.m. with a list of the disputed exhibit(s) to be offered the next  
20 day. If possible, the Court will rule on the admissibility of any disputed exhibits or  
21 witnesses before the start of each trial day.

### 3.5 Remote Jury Selection.

The jury will consist of no fewer than seven (7) and no more than 12 members, and there will be no alternates. The Court will advise the parties at the pretrial conference how many jurors will be empaneled.

The Court will conduct jury selection over Zoom unless the parties object and good cause is shown why jury selection should not take place through remote video means. Prospective jurors will participate on their personal computers or handheld devices. Limited technical support and court-provided computers are available to prospective jurors who identify their needs in advance.

Voir dire will unfold on Zoom in successive panels since not all prospective jurors will fit on a display screen at once. Panels will typically consist of 12-15 jurors per panel.

The Court will examine the prospective jurors using “screening” questions to identify hardships and conflicts. These questions can generally be answered with a “yes” or “no” response. The parties may also submit general screening questions, which the Court may ask of panel members. Open-ended questions or multi-part questions are not appropriate for this portion of voir dire.

Following the Courts screening, counsel may examine the panel members directly. The Court will establish time limits for attorney-led voir dire at the pretrial conference, but regardless of time, the Court will instruct counsel to move on with the examination if questioning becomes too repetitive or irrelevant, or if counsel tries to argue the merits of the case. Typically, the parties will be given an

1 initial 20 minutes for questioning, followed by another 10 minutes of follow-up  
2 questions.

3       Following each panel, the parties may challenge for cause. Once all  
4 challenges for cause have been heard, the Court will hear peremptory challenges.  
5 Each side ordinarily has three peremptory challenges, which will be made using a  
6 “strike sheet” in alternating fashion, beginning with the plaintiff. *See* Fed. R. Civ. P.  
7 47; 28 U.S.C. § 1870. Peremptory challenges must not be used to exclude potential  
8 jurors for discriminatory reasons. *See Batson v. Kentucky*, 476 U.S. 79 (1986).

9       No one is allowed to record the proceedings by any means. **Recording Zoom**  
10 **proceedings without permission from the Court is illegal.**

### 11 **3.6 Courtroom Technology.**

12       Jurors have high expectations about the lawyers’ ability to use the courtroom  
13 technology. Training on the built-in courtroom equipment is strongly encouraged,  
14 and it is the parties’ responsibility to participate in training sufficiently before the  
15 start of trial, if needed. *See* <https://www.wawd.uscourts.gov/attorneys/trial-support>  
16 for more information. At the pretrial conference, the parties must schedule with  
17 Mr. Cogswell a time to test any equipment that they wish to use at trial. Absent  
18 extraordinary circumstances, trial will not be delayed because of technical  
19 difficulties.

### 20 **3.7 Deposition Designations.**

21       The parties must follow LCR 32(e), except that for each deponent the parties  
22 intend to offer deposition testimony instead of, or in addition to, live testimony, they  
23

1 must submit (1) a single copy of the highlighted deposition transcript, with  
2 designations and counter designations highlighted in different colors, including  
3 typed objections in the margins; and (2) a proposed order in Word format, including  
4 a chart setting forth any objections and responses in substantially the following  
5 format:

6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 Page/Ln. No.	Objection	Response	Ruling

9 The parties must meet and confer about any disputed deposition designations  
10 before submitting them to the Court for a ruling.

11 For jury trials, unless a video deposition is presented, the party offering  
12 deposition testimony must provide a person to read the answers from the witness  
13 stand.

### 14 **3.8 Other Pretrial Guidance.**

15 All argument and witness questioning should occur from the courtroom  
16 lectern. Do not approach the jury or a witness without permission.

17 If you need an accommodation for a court appearance or have accessibility-  
18 related questions, please contact Mr. Cogswell.

19 The Court invites parties and counsel to share their honorifics or pronouns—  
20 such as Ms., Mx., or Mr.—so that the Court may address them respectfully. People  
21 appearing before the Court may do so in an email to, or speaking with Mr. Cogswell  
22 or when appearing for court.  
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1 Cellphones are allowed inside Judge Whitehead's courtroom, but they must  
2 be turned *off* when court is in session. If your laptop or tablet features a digital  
3 assistant (e.g., *Siri*), be sure to disable the voice-prompt or always-listening feature  
4 to avoid accidental courtroom interruptions.

5 Finally, be on time; if you're able, stand when speaking; address all remarks  
6 to the Court, not opposing counsel; be professional and ethical; be courteous and  
7 respectful to courtroom staff at all times.

#### 8 4. SETTLEMENT

9 If this case settles, counsel must notify Mr. Cogswell as soon as possible at  
10 grant\_cogswell@wawd.uscourts.gov. Attorneys who fail to give the Court prompt  
11 notice of settlement may be subject to sanctions or discipline under LCR 11(b).

12 Dated this 29th day of February, 2024.

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Jamal N. Whitehead  
15 United States District Judge  
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